Remarks

Applicant respectfully requests reconsideration. Applicant's attorney wishes to thank the Examiner for participating in a telephone interview held on November 10, 2006, during which discussions were conducted regarding the claims but no agreement was reached.

Applicant also wishes to direct the Examiner's attention to the attached Information Disclosure Statement, which cites a PCT publication, WO 01 28060 A1 to Efrati (hereinafter, "Efrati"). This publication was cited to Applicant in an International Search Report in connection with a corresponding international case. Copies of the reference and the search report are enclosed, as well as a surcharge under 37 C.F.R. § 1.17(p).

In response to the Office Action, claims 1, 3, 17, 19, and 22 – 26 have been amended, claims 2 and 4 have been canceled, and claims 27-28 have been added.

The Examiner has rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by Baker et al. The Baker reference has already been discussed in Applicant's prior responses. Applicant has amended claim 1. Claim 1 as amended clearly and unambiguously distinguishes over Baker.

Claim 1 as amended is directed to a method of testing equipment operatively connected to a target medium having a protocol. In addition to providing a plurality of communication element types, claim 1 as amended includes, *inter alia*, the steps of

> providing an electronic instrument for operatively connecting to the equipment over the target medium and operating under control of a software program;
>
> instantiating, by the software program, at least one of the plurality of communication element types to create a transmit message instance;
>
> instantiating, by the software program, at least one of the plurality of communication element types to create an expect message instance;
>
> directing, by the software program, the electronic instrument to transmit a message to the equipment according to the transmit message instance and to receive a message from the equipment according to the expect message instance; and

comparing the message received from the equipment with expected results to determine whether expected results were obtained[.]

Support for the electronic instrument can be found at ¶¶ 8 and 50 of the instant application, as well as throughout U.S. Patent Application No. 10/325,070, which is incorporated by reference by the instant application. See especially ¶¶ 36, 37, and 83 of the incorporated application. Support for the "instantiating" steps can be found at ¶¶ 46 – 49 of the instant application. Support for the "directing" and "comparing" steps can be found at ¶¶ 51-52.

Baker does not teach or suggest communication element types that can be instantiated. As is known, the term "instantiate" is a software term that refers to the act of generating a particular instance of an object from a prototype or template. In claim 1 as amended, communication element types are clearly *types* rather than *instances*. They exist as templates that can be used by a software program to create instances. The instances, rather than the types themselves, can then be manipulated and run by the software program for communicating over the target medium.

Baker does not teach or suggest communication element types that can be instantiated. Nor are they inherent in Baker. Baker provides a Protocol Description File, or "PDF," that includes protocol-specific information. See col. 10, lines 50-60. The protocol-specific information is used for configuring Baker's system for parsing, filtering, or analyzing network data. However, Baker's PDFs do not store templates or types, which are instantiated by a software program to create instances. First, no software program is disclosed for performing these functions. Although software of some kind may be used in connection with Baker's system, Baker does not include software for performing the particular functions defined in claim 1 as amended. Second, Baker does not distinguish between types and instances. Rather, Baker's PDFs are used explicitly.

Therefore, Baker does not teach or suggest the step of "instantiating, by the software program, at least one of the plurality of communication element types to create a transmit message instance" or the step of "instantiating, by the software program, at least one of the plurality of communication element types to create an expect message instance."

In addition, Baker does not disclose a step of "comparing the message received from the equipment with expected results to determine whether expected results were obtained." Baker is not concerned with testing equipment, and does not perform comparisons to determine whether expected results are obtained.

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In view of these differences, claim 1 as amended distinguishes over Baker. Therefore, the rejection of claim 1 as amended under 35 U.S.C. § 102(b) is overcome and should be withdrawn. As claim 1 as amended has not been rejected based on any other grounds, Applicant respectfully submits that claim 1 as amended is allowable.

Claims 3, 5-10, and 12-24 depend from claim 1 and are allowable for the same reasons.

The Examiner has rejected claim 25 under 35 U.S.C. §102(b) as being anticipated by Baker. Applicant has amended claim 25. Claim 25 as amended is directed to a method of communicating over a target medium having a protocol. Like claim 1 as amended, claim 25 as amended includes a step of "providing a plurality of communication element types," at least one of which is instantiated by a software program to create at least one "instance." Claim 25 as amended thus includes the type-instance dichotomy referred to above in connection with claim 1 as amended. For reasons stated above, Baker does not make a distinction between "types" and "instances." He uses PDFs explicitly.

In addition, claim 25 as amended recites a step of providing a "software program" for controlling an "electronic instrument." Claim 25 as amended further recites the step of "operating the software program to control the electronic instrument to direct communications over the target medium responsive to each communication element instance." Although Baker's system may involve the use of software of some sort, it does not teach or suggest a "software program" that performs the functions defined in claim 25 as amended.

Therefore, claim 25 as amended is not anticipated by Baker, and the rejection of claim 25 as amended under 35 U.S.C. § 102(b) is overcome.

The Examiner has rejected claim 26 under 35 U.S.C. §102(b) as being anticipated by Baker. Claim 26 as amended is directed to a method of communicating over a target medium having a protocol. Like claims 1 and 25 as amended, claim 26 as amended distinguishes between "types" and "instances." Claim 26 as amended is more specific, however, in that it refers to "message types" and "word types" arranged hierarchically, "with at least one message type including a reference to at least one word type."

Contrary to the assertions in the Office Action, Baker does not disclose the concepts of "message types" and "word types." Baker's PDFs encode a wide range of protocol-specific information, but they do not represent different messages and words as different "types."

In addition, claim 26 as amended recites a step of providing a "software program" for controlling an electronic instrument. Claim 26 as amended further recites the step of "operating the software program to control the electronic instrument to direct communications over the target medium responsive to the message instance." Although Baker's system may involve the use of software of some sort, it does not teach or suggest a "software program" that performs the functions defined in claim 26 as amended.
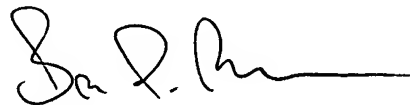
Therefore, claim 26 as amended is not anticipated by Baker, and the rejection of claim 26 as amended under 35 U.S.C. § 102(b) is overcome.

Claims 27-28 have been added. Claims 27-28 depend from claim 1 as amended and are allowable for the same reasons as applied to claim 1 as amended. Support for claims 27-28 can be found at ¶¶ 49-50.

Conclusion:

Applicant contends that the application is now in condition for allowance. A notice to that effect is earnestly solicited.

Respectfully Submitted,

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